



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 26, 1992

Honorable Bob Bullock  
Lieutenant Governor of Texas  
P. O. Box 2068  
Austin, Texas 78711-2068

Letter Opinion No. 92-13

Re: Whether a rider to the General Appropriations Act may authorize the Texas Public Finance Authority to issue revenue bonds to finance construction of a state office building in Nueces County (RQ-274)

Dear Mr. Bullock:

You have requested our opinion as to the validity and efficacy of a rider to the current General Appropriations Act, Acts 1991, 72d Leg., 1st C.S., ch. 19, which purports to authorize the Texas Public Finance Authority (hereafter TPFA) to issue revenue bonds to finance the construction by the State Purchasing and General Services Commission of a state office building on land owned by Texas A & M University in Nueces County. The rider, enacted as section 125 of article V of the General Appropriations Act, provides:

**CAPITAL IMPROVEMENT BONDS.** Notwithstanding the limitations prescribed by Article 601d, Section 9, relating to the location of buildings for which bonds may be issued, the Texas Public Finance Authority or its successor may issue revenue bonds under this Act to finance construction by the State Purchasing and General Services Commission of a state office building on land owned by the Texas A&M University System in Nueces County, at an estimated cost of \$10,000,000.

Acts 1991, 72d Leg., 1st C.S., ch. 19, art. V, § 125, at 1049. Article 601d, V.T.C.S., the Public Finance Authority Act, provides, in section 9(a):

The board may issue and sell bonds in the name of the authority to finance projects *that consist of the acquisition or construction of buildings in Travis County, Texas*. Upon receiving a request described in Section 5.34, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil

Statutes), the board may issue bonds in amounts up to the previously authorized amount of bonds plus five percent of the acquisition cost of the property, all as described in the request. [Emphasis added.]

Section 10(a) of article 601d, V.T.C.S., was amended by two separate bills during the 71st Legislature. One of those amendments, reads as follows, in pertinent part:

Except as permitted by Sections 24A(b)(5) and 24A(d) of this Act or Section 5.34, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), before the board may issue and sell bonds, *the legislature by law must have authorized in this Act, the General Appropriations Act, or another Act the specific project* for which the bonds are to be issued and sold and must have authorized the estimated cost of the project or the maximum amount of bonded indebtedness that may be incurred by the issuance and sale of bonds for the project. . . .

V.T.C.S. art. 601d, § 10(a) (as amended by Acts 1989, 71st Leg., ch. 1244, § 8) (emphasis added).<sup>1</sup> We must first inquire into the precise nature of section 125 of the current General Appropriations Act.

Section 125 might at first glance appear to be *general law*, because it authorizes the TPFA "to issue revenue bonds." That language in section 125 is, however, merely duplicative of the general authority granted to TPFA in section 9(a) of article 601d, quoted above: "[t]he board may issue and sell bonds in the name of the authority . . ." Furthermore, section 125 is not in itself an "item of

---

<sup>1</sup>The *other* section 10(a), also enacted in 1989, states:

(a) Before the board may issue and sell bonds under the authority of Section 9 of this Act, the legislature, by law, must have specifically authorized:

(1) the acquisition or construction of the building for which the bonds are to be issued and sold; and

(2) the estimated cost of the acquisition or construction of the building or the maximum amount of bonded indebtedness that may be incurred by the issuance and sale of the bonds.

V.T.C.S. art. 601d, § 10(a) (as amended by Acts 1989, 71st Leg., ch. 786, § 1).

appropriation." Bond proceeds are appropriated in section 109 of the General Appropriations Act:

**APPROPRIATION OF BOND PROCEEDS.** The proceeds from the issuance and sale of bonds or other obligations pursuant to the provision of Art. 601d and 601d-1, V.T.C.S., are appropriated to the state agency to whose account the proceeds are deposited or credited.

Acts 1991, 72d Leg., 1st C.S., ch. 19, art. V, § 109, at 1045. Section 125 is, in fact, a classic *rider* which *directs the expenditure* of appropriated funds.

The section 125 rider is similar to that considered by the Texas Supreme Court in *Jessen Assocs., Inc. v. Bullock*, 531 S.W.2d 593 (Tex. 1975). In that case, the court considered the following provision of a three-part rider:

The Board of Regents of the University of Texas System is hereby authorized (1) to expend such amounts of its Permanent University Fund bond proceeds and/or other bond proceeds and such amounts of its other available moneys as may be necessary to fund one or more of the following projects either in whole or in part, . . . (1) Alterations and Additions to Law School . . . .

531 S.W.2d at 597. The court indicated clearly that the quoted provision was not itself an "item of appropriation." Rather, it

merely directs the expenditure of appropriated funds, and is therefore permissible under Article III, Section 35 of the [Texas] Constitution.

*Id.* at 601.

In our opinion, the section 125 rider is virtually identical to that considered in *Jessen Associates*. Both "direct the expenditure of funds appropriated elsewhere." Such expenditure is "directed" by authorizing specific projects. In *Jessen Associates*, the language used is "as may be necessary to fund [+ listing of project]." In section 125, the language used is "to finance construction . . . of [+ listing of project]."

Even though section 125 is a permissible rider under the terms of *Jessen Associates*, it is also well established that a rider to a general appropriations bill may

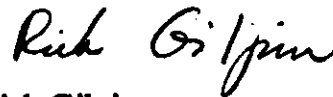
not be construed to repeal, modify, or amend existing general law. *See Moore v. Sheppard*, 192 S.W.2d 559 (Tex. 1946); Tex. Const. art. III, § 35; Attorney General Opinions M-1199 (1972); V-1254 (1951). By authorizing construction of a building in Nueces County, section 125 might appear to conflict with section 9(a) of article 601d, which authorizes the TPFA to "issue and sell bonds . . . to finance projects that consist of the acquisition or construction of buildings in *Travis County*." (Emphasis added.)

In our opinion, however, article 601d must be read as a whole to best ascertain legislative intent. While section 9(a) contemplates projects only in Travis County, section 10(a) permits any "specific project" "authorized in . . . the General Appropriations Act."<sup>2</sup> In our view, it would make a mockery of the notion of legislative intent to ignore the specific declarations of a rider deliberately anticipated and provided for in a general statute. We believe that section 125 may be harmonized with article 601d so as to give effect to the provisions of each. Thus, we conclude that the requirement of section 125, that the specific project inquired of here be located in Nueces County, does not conflict with any provision of general law.

### S U M M A R Y

Section 125 of the current General Appropriations Act is a valid method by which the legislature may authorize the issuance of revenue bonds to finance construction of a state office building in Nueces County.

Very truly yours,



Rick Gilpin  
Assistant Attorney General  
Opinion Committee

---

<sup>2</sup>Article 601d itself contemplates exceptions to the Travis County limitation by authorizing three particular projects, in Harris, Bexar, and Tarrant Counties. *See* V.T.C.S. art. 601d, § 24A(c).